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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 544/2013

Decision adopted by the Committee at its fifty-fourth session (20 April–1 May 2015

Submitted by:	A.K. (represented by counsel, Hélène Agbémégnah, Centre de contact Suisse.sse. – Immigré.e.s/SOS Racisme)
Alleged victim:	A.K.
State party:	Switzerland
Date of complaint:	25 April 2013 (initial submission)
Date of decision:	8 May 2015
Subject matter:	Deportation of the complainant to Turkey
Procedural issue:	None
Substantive issue:	None
Article of the Convention:	Article

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session)

concerning

Communication No. 544/2013*

Submitted by:	A.K. (represented by counsel, Hélène Agbémégnah, Centre de contact Suisse.sse.s – Immigré.e.s/SOS Racisme)
Alleged victim:	A.K.
State party:	Switzerland
Date of complaint:	25 April 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 2015,

Having concluded its consideration of communication No. 544/2013, submitted on behalf of A.K. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The complainant is A.K., a Turkish national who was born on 15 November 1962 and is currently living in Sion (Switzerland). He is subject to a deportation order issued by the Federal Office for Migration[1] and maintains that his deportation to Turkey would constitute a violation by Switzerland of article 3 of the Convention. He is represented by counsel, Ms. Hélène Agbémégnah (Centre de contact-Suisse.sse.s-Immigré.e.s/SOS Racisme).

1.2 In accordance with rule 114 of its rules of procedure (CAT/C/3/Rev.5), the Committee requested the State party, on 26 April 2013, to refrain from expelling the complainant to Turkey while his communication was under consideration by the Committee.

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* The following members of the Committee participated in the examination of the present communication: Ms. Essadia Belmir, Mr. Alessio Bruni, Mr. Satyabhoosun Gupt Domah, Mr. Abdoulaye Gaye, Mr. Jens Modvig, Ms. Sapana Pradhan-Malla, Mr. George Tugushi and Mr. Kening Zhang.

[1] The deadline set for his departure is 24 April 2013.

The facts as submitted by the complainant

2.1 The complainant is a Turkish national of Kurdish ethnicity who was born on 15 November 1962 in the village of Ömerli, which is the native village of Abdullah Öcalan, the leader of the Kurdistan Workers' Party (PKK). It was under the latter's influence that the complainant first came to sympathize with the Kurdish movement. This led him to actively support PKK combatants by bringing them supplies and performing other tasks. Following the coup d'état of 12 September 1980, [2] the complainant and many other young people from his and nearby villages were arrested and convicted for being members of the PKK. The complainant was detained, [3] tortured and prosecuted in a multi-accused trial brought against PKK members in 1981. He was ruled to be a PKK combatant and sentenced to 16 years and 8 months' rigorous imprisonment.

2.2 On 20 April 1990, he was released on parole and forcibly recruited into the Turkish army for two years. During that period, he was subjected to repeated harassment, threats and other forms of persecution. About one year after returning to his village, he was arrested again and imprisoned for 3 months for having taken part in a protest against the Aleppo massacres. [4] In 1992, the complainant returned to his native village but, until 1999, was required to report to the police station at regular intervals to sign a register. Despite these actions taken against him, the complainant never ceased to support the PKK and other affiliated political parties, and was a founding member of the Party of Democracy (DEP) (Democrasi Partisi)[5] in Halfeti. However, on account of his earlier conviction, loss of civil rights and ban on holding political office, he could belong to the party only unofficially. Owing to the very close surveillance of the party's premises and of the complainant himself, however, his involvement did not escape the notice of the authorities, and he continued to be subjected to numerous forms of persecution, including sundry harassment, searches, short periods of detention and death threats.

2.3 Before the DEP was dissolved, the complainant played a significant part in the creation of the People's Democracy Party (HADEP), even though, for the same reasons, he could not appear as an official founding member. HADEP having subsequently run into numerous difficulties, the DEHAP (Democratic People's Party) was founded in October 1997, and the complainant again contributed actively to the party's establishment.[6] Three months later, law enforcement officials approached the complainant to inform him that he was not permitted to engage in political activities as part of the party leadership. Because of his close involvement with all the Kurdish parties which succeeded one another, the complainant continued to be seen as an active member of the PKK, since all those parties were looked upon as the legal arm of the PKK. In 2004, he managed to obtain a police document listing the charges brought against him at the time, including what was described as an "offence against the State".[7] In addition, the HAPED was banned by the Turkish Constitutional Court, which ruled that, by assisting the PKK, it was acting against the integrity of Turkey and the nation.

[2] On 12 September 1980, the Turkish Army, led by General Kenan Evren, organized a coup d'état and established a military regime that was to continue until 1983.

[3] The complainant attaches a statement (original Turkish text and translation into German) dated 3 June 1987.

[4] At the end of the Gulf war, believing they had the support of the United States of America, the Kurdish people rose up. The repression caused 2 million Kurds to flee to Turkey and Iran. In exchange for receiving the refugees, Turkey sought an undertaking from Kurdish leaders in Iraq that they would provide no support to the PKK.

[5] Turkish political party founded on 7 May 1993 and dissolved on 16 June 1994.

[6] The complainant attaches a copy of his membership card.

[7] The complainant attaches a copy of the report (original version in Turkish).

2.4 On 20 March 2003, the complainant filed an asylum application with the Swiss Embassy in Ankara. On 6 June 2003, the Federal Office for Refugees (now the Federal Office for Migration) refused the complainant permission to enter Switzerland and rejected his asylum application. In a decision dated 22 November 2004, the former Swiss Asylum Appeals Commission dismissed an appeal filed on 14 July 2003 against the decision of the Federal Office for Migration.

2.5 The complainant continued to be subjected to constant persecution, repeated arrests, threats and other pressure. He was last arrested on December 2006. Also in December 2006, he received death threats from the Turkish Gendarmerie intelligence and counter-terrorism service which drove him to leave his country to seek refuge in Switzerland. His mental health having been affected by years of constant persecution, the complainant could no longer bear the harassment, arrests and death threats, which is why he decided to leave Turkey on 25 April 2007.

2.6 After entering Switzerland illegally on 3 May 2007, the complainant filed a new asylum application the same day. In a decision dated 25 November 2010, the Federal Office for Migration rejected his application.[8] The Office ruled that the complainant was not able to demonstrate that, at the time of his departure from Turkey in 2007, he was considered as dangerous. The Office decided that his activities in the DEHAP (subsequently renamed the DTP) were simply those of any sympathizer with the Kurdish cause in general. He was last detained, briefly, in December 2006. The intimidation, threats and brief periods of detention which he recounts reflect the treatment meted out to the Kurdish population in general. According to the Office, there was no one specific event that had persuaded the complainant to decide to leave Turkey. Furthermore, according to inquiries made by the Swiss Embassy in Ankara, the complainant did not appear in police records in Turkey, and was not subject to any official investigation or passport ban. In addition, the complainant had apparently stated that he had had no particular problem with the police since filing his first asylum application, while on another occasion affirming that he had been repeatedly detained by the police. His arrest in 1981, his imprisonment from then until 1990, the fact that he was required to sign a register until 1999, and the threats he allegedly faced at the time of his first asylum application in 2003 date back too far to justify his flight from the country in April 2007. The Office also considered that the complainant could have escaped the police harassment by going to live in another part of the country, such as Izmir or Ankara, where many Kurds live without facing any particular problems.

2.7 On 7 February 2011, the complainant filed an appeal against the decision of the Federal Office for Migration. In a judgement dated 25 March 2013, the Federal Administrative Court definitively rejected the complainant's appeal. The Court upheld the conclusions reached by the Office, essentially ruling that there was no temporal causal link between the reasons cited in support of the complainant's asylum application (his arrest in 1981, imprisonment until 1990, the persecution suffered during his military service, the obligation to sign a register every week until 1998 or 1999, the police harassment, and the second three-month period of detention) and his departure in April 2007. In addition, according to the Court, the authorities' action against the complainant was limited to questioning and, occasionally, short periods of detention, which tends to suggest that he did not, in their eyes, constitute any particular danger. Furthermore, the complainant had, and still has, the option of going to live in another part of the country, away from his native village. The Court reiterated that, according to inquiries carried out by the Swiss Embassy in Ankara in

[8] In a decision issued on 4 January 2011, the Federal Office for Migration repealed and reissued its decision of 25 November 2010, because of an error in the list of recipients. However, the decision was unchanged.

2008, the complainant was not wanted and did not have a police record. The appeal was therefore dismissed. In a letter dated 2 April 2013, the Office set a new deadline for his departure of 24 April 2013.

2.8 The complainant claims to have exhausted all available domestic remedies. He adds that, in Switzerland, he has continued to support the Kurdish cause. He is a member of the Mesopotamian Cultural Association in Fribourg, and of the Federation of Kurdish Associations in Switzerland.[9]

The complaint

3.1 The complainant alleges that there are substantial grounds for believing that, because of his support for the PKK and other affiliated Kurdish parties such as the DEP, HADEP and DEHAP, he would be subjected to torture if he was returned to Turkey. Basing himself on NGO reports,[10] he notes that very little progress has been made in the fight against torture and impunity in Turkey, and that former members and activists of the PKK (and the organizations that have subsequently taken its place) must expect to be searched, arrested, interrogated, detained and prosecuted by the Turkish security forces. According to the same sources, the likelihood increases if the persons concerned have not availed themselves, or have been unable to avail themselves, of the amnesty laws in force, or if they are suspected of having inside knowledge of PKK bodies abroad or in Turkey. These reports clearly support the claim that members of the DEHAP/HADEP party are subjected to harassment, surveillance, accusations and torture. Despite improvements on the legal front, torture and ill-treatment remain widespread in Turkey. In 2004, the Turkish Association for the Defence of Human Rights identified 1,040 cases in which persons had been ill-treated and tortured in the country. Lastly, a report published by the Swiss Refugee Council attests to the existence of a register of former members and activists of parties affiliated to the PKK, which constitutes a form of evidence likely to lead to State persecution. It is quite possible that political activities carried out while in exile also appear in these records.[11] The complainant recalls that he has continued to support the Kurdish cause in Switzerland (see paragraph 2.8).

3.2 The complainant also asserts that his mental health should be taken into account. He has been treated by a psychologist at the consultation centre for victims of war and torture at Geneva University Hospitals since May 2011. In a medical report, the psychologist notes that he diagnosed the patient as suffering from moderate depression, post-traumatic stress and generalized anxiety.[12]

3.3 For these reasons, the complainant alleges that, in the event of his return, he would face a personal risk of being arrested by the police, and subsequently detained and tortured. There is clear and objective evidence attesting to his involvement with the PKK, DEP, HADEP and DEHAP parties. He comes from a family known for its links with and support for the PKK. One of his brothers, C.K., an active member of the PKK, has been granted asylum in Switzerland. Other members of his family remain active in the guerrilla movement, and a maternal cousin was killed for being a member of the movement. An uncle on his father's side has been granted refugee status in Germany.

[9] Statements attached to the file.

[10] Amnesty International (May 2012), Swiss Refugee Council (February 2006). Reports annexed.

[11] The complainant notes that a German court ruling issued in April 2005 by the Higher Administrative Court of North Rhine-Westphalia makes it clear that the Turkish intelligence units attached to the directorate of the armed forces monitor the political activities of Turkish citizens in exile closely.

[12] The complainant attaches a detailed medical report, drawn up by a doctor at his request, which describes him as a victim of torture suffering from post-traumatic stress disorder and requiring regular psychotherapeutic treatment.

3.4 The complainant adds that he is still wanted by the police, and that members of his family are subjected to searches and have been harried by the police on his account.[13] There are therefore grounds to believe that he would be at risk of being tortured if returned to Turkey. This possibility is supported by statements made by the mayor of Ömerli village, who reports that he has been questioned a number of times about the complainant.[14]

State party's observations on the merits

4.1 On 28 October 2013, the State party submitted its observations on the merits, in which it noted that the complainant has merely reiterated to the Committee the reasons he invoked before the national authorities and has not provided any new evidence that might justify a review of the decisions taken by the Federal Office for Migration and the Federal Administrative Court. The State party recalls the conclusions reached by the Federal Office for Migration, which, in its decision of 3 June 2003, found that the pressure and harassment suffered by the complainant took place solely at a local level, and did not reach such a scale as to constitute treatment prohibited under the Convention. The State party recognizes that the complainant was exposed to "certain petty harassment", which was rooted, for the most part, in the fact that the local authorities disapproved of his political activities and those of his family. It adds that the complainant has not put forward any new conclusive evidence, other than the fact of his conviction in the 1980s for assisting the PKK, while the information gathered by the Swiss Embassy in Ankara has confirmed that he is not wanted by the police, does not have a police record and is not subject to a passport ban.

4.2 The State party notes that, under article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. Recalling the criteria established by the Committee in its general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, which require the complainant to prove that he or she runs a personal, present and substantial danger of torture if deported to his or her country of origin, the State party submits that the Committee has already had occasion to examine communications in which complainants of Kurdish origin claimed that they would be at risk of being subjected to torture should they be returned to Turkey. On those occasions, the Committee had noted that the human rights situation in Turkey was a matter of concern, particularly for PKK militants. It concluded, however, that particular complainants would face a real and personal risk of torture upon return to Turkey only where additional individual elements could be established, such as the extent of their political activities on behalf of the PKK, the existence of any criminal charges against them and whether they had been subjected to torture in the past.[15]

4.3 The State party contends that in the case under consideration the complainant has not submitted any individual elements showing that he faces a foreseeable, real and personal risk of torture if returned to Turkey. The complainant was detained in the 1980s and on several occasions in the 1990s. However, he has not been arrested since,

[13] A letter from his family is attached in this regard. A letter from his lawyer in Turkey, Ahmet Bindal, is also annexed. In this letter the lawyer affirms that the family is regularly questioned about the complainant, but that it has not been possible to obtain any documentary evidence, as the files are secret. According to the same letter, the complainant's family have apparently been informed that he is wanted by the State security forces in connection with the legal proceedings undertaken against the KCK (a party affiliated to the PKK). This information could be checked directly with the town hall of Ömerli village, where the family lives.

[14] The mayor's letter is attached to a file.

[15] See, inter alia, communications No. 431/2010, *Y. v. Switzerland*, decision adopted on 21 May 2013, and No. 373/2009, *Aytulun and Güclü v. Sweden*, decision adopted on 19 November 2010.

and has not been beaten or ill-treated since completing his prison sentence. There is therefore nothing to suggest that he has been tortured by the Turkish authorities in the recent past. Furthermore, the State party recalls that the Federal Administrative Court concluded that there was no temporal causal link between the grounds cited by the complainant in support of his asylum application — his arrest in 1981, imprisonment until 1990, persecution during military service and police harassment — and his departure from Turkey in April 2007.

4.4 As far as his political activities in the PKK and political parties such as the DEP, HADEP and DEHAP, the contention that he played a significant role in the establishment of Kurdish political parties and the argument that several members of his family are politically active are concerned, the State party notes that these allegations differ from the complainant's previous statements, in which he explained that he was not a member of DEHAP but simply worked for the party, and that he held only a supporter's card and not a membership card.

4.5 With regard to the complainant's political activities in Switzerland, the State party recalls that the Federal Administrative Court concluded that the complainant was not known to have been involved in any special political activity since his arrival in Switzerland, so that it was deemed unlikely that he would attract undue attention from the Turkish authorities if returned. The State party adds that the attestations provided are vague,[16] and show only that he took part in organized events. Furthermore, these attestations were drawn up only a month after the complainant's appeal had been dismissed by the Court.

4.6 The State party further submits that there is no reason to fear in the present case that the complainant would suffer persecution "by association" (*sippenhaft*) because he belongs to a family known for its support for the PKK, and is from the same village as the Kurdish leader, Abdullah Öcalan. Following a detailed analysis of the facts, the Federal Administrative Court concluded that there was no evidence that, because of his family background, the complainant had been, or might be, subjected to targeted persecution or any more serious than suffered by the Kurdish people as a whole.

4.7 The State party adds that the Court ruled that the brevity of the complainant's periods in detention was indicative of the fact that he was not considered to constitute any particular threat in the eyes of the authorities. Furthermore, the alleged persecution has not extended beyond the complainant's home village, meaning that he would be at liberty to move to another part of the country.

4.8 On the basis of inquiries conducted by the Swiss Embassy in Ankara, the State party reiterates that the complainant is not wanted by the police. The complainant has failed to submit any document that might serve to substantiate the claim that he was the subject of particular attention from the authorities.

4.9 Lastly, with regard to the complainant's state of health, the State party notes that the root cause of the psychological problems described is not clearly established. In any case, the mere fact that he is afflicted by these disorders is not in itself sufficient grounds to prevent the State party from going ahead with his deportation.[17] Furthermore, it is possible for the complainant to consult a doctor in his country of origin, since, in its decision concerning the complainant, the Federal Administrative Court ruled that there are adequate and accessible medical facilities in Turkey.[18]

[16] Statements issued by the Mesopotamian Cultural Association and the Federation of Kurdish Associations in Switzerland, dated 12 and 14 April 2013 respectively.

[17] The State party refers, inter alia, to communication No. 228/2003, *T.M. v. Sweden*, decision adopted on 18 November 2003, and communication No. 220/2002, *R.D. v. Sweden*, decision adopted on 2 May 2005.

[18] Judgement of 25 March 2013, para. 8.3.2.

4.10 In the light of the foregoing, the State party submits that there are no substantial grounds for believing that the complainant faces a real and personal risk of torture upon return to Turkey. Therefore, his deportation would not constitute a violation of article 3 of the Convention.

Additional submission by the complainant

5.1 On 24 October 2013, the complainant submitted information additional to his initial complaint. He attaches the testimony of one Seyid Ahmet Öcalan, dated 4 April 2013, who states that the complainant held important political positions, such as Halfeti district President of HADEP, DEHAP and DTP. According to the same testimony, the complainant was a member of the DEHAP party leadership. Because of his position, he had received numerous threats from the Turkish security forces. A second testimony submitted by the former Deputy Co-chairperson of the DTP, Mustafa Sarikaya, and dated 12 April 2013, attests to the fact that the complainant was imprisoned in the 1980s and suffered severe torture and inhuman treatment in Diyarbakir prison on account of his political activities. According to the same testimony, the complainant is still wanted by the police. The complainant attaches a third testimony, dated 26 August 2013 and signed by the Chairperson of Halfeti district BDP, which attests to the fact that the complainant was a founding member of the DEHAP and was exposed to harassment and psychological violence after his release from prison.

5.2 The complainant also attaches the testimony of a Swiss national, J.S., who lived in the Kurdish part of Turkey between 2002 and 2008 and set up a shelter for battered women in Mersin. J.S. met a number of Kurdish leaders in Mersin, as well as the complainant in Halfeti, who was introduced to him as a political friend and HADEP contact. With the complainant, J.S. visited members of the Öcalan family (the family of the PKK leader).[19] In Mersin, J.S. said that he had been in touch with members of the Grey Wolves,[20] who had openly made death threats against persons such as the complainant. The testimony ends by affirming that the complainant would be in grave danger if he should return to Turkey.

5.3 The complainant also attaches two medical certificates.[21] The first medical report, drawn up by a doctor at the consultation centre for victims of war and torture of Geneva University Hospitals, indicates that the complainant "exhibits a set of somatic symptoms and psychological problems constituting a clinical pattern often found in victims of systematic violence"; that the muscular injuries identified in the complainant "are consistent with the consequences of abuse of the kind described [by the complainant]"; and that he shows psychological symptoms that meet the description of severe post-traumatic stress disorder. The report concludes that, in view of the severity of the complainant's psychological problems, the medical treatment which has been initiated (which includes psychological support and regular somatic check-ups) should not be interrupted. Any interruption of the treatment, in the event of his forced return to Turkey, would be dangerous for the health of the complainant, who was judged by the signatories of the report to be "incapable of coping with the pressures of such a return".

[19] J.S. attaches a photograph showing him with members of the Öcalan family and the complainant.

[20] An anti-Kurdish Turkish nationalist movement.

[21] Dated 26 April and 17 July 2013, respectively, and which supplement the report already submitted on the complainant's psychological state (see paragraph 3.2 above).

Complainant's comments on the State party's submission

6.1 On 6 February 2014, the complainant submitted his comments on the State party's submission (para. 4.1). In the first place, he highlights his continuing political engagement, which, coupled with the fact that he has been arrested and tortured in the past, place him at a real risk of being subjected to torture if forcibly returned to Turkey.

6.2 Secondly, he notes that the State party, like the Federal Office of Migration in its decisions, has wrongly assessed the political situation in Turkey. And yet the Federal Administrative Court rejected this assessment in a recent ruling, in which it recognized that proven or assumed members of organizations such as the PKK, which are deemed to be dangerous to the State, are at particular risk of being persecuted, ill-treated or tortured.[22]

6.3 The complainant adds that, in its decision on his case of 4 January 2011, the Federal Office of Migration accepted the fact that he had had problems with the authorities and had been required to report to the local police station because of his conviction in the 1980s and 1990s for assisting the PKK. The State party is therefore being inconsistent when it maintains that the complainant is not wanted by the police and does not have a police record, and that he could settle in another province. Having been arrested several times for offences against the unity of the State, he must have a police and a criminal record, which would prevent him from moving to another province. However, as those records are confidential documents, the Swiss Embassy in Ankara understandably did not have access to such information.

6.4 The criteria applied by the Committee, such as the scale of political activities in support of the PKK, past prosecutions, and the question of whether the complainant has been tortured in the past,[23] are all met in the present case. The complainant has been arrested and tortured in the past, and remains a troublesome person for the Turkish authorities. Contrary to the State party's argument that any risks he might have faced belonged to the past, the complainant asserts that when he filed his asylum application in 2003, less than eight years had passed since his last arrest in the 1990s. Furthermore, as he was arrested and released on numerous occasions, and the periods of detention coincided with periods of varying degrees of violent repression, the possibility of his being arrested again if returned cannot be ruled out.

6.5 Lastly, the complainant reiterates that he has been politically active and has played an important part in the establishment of Kurdish parties (and was imprisoned for this reason) and that members of his family in Switzerland and Turkey are politically active, including his brother, who sought refuge in Switzerland and has been involved in significant political activity supporting the PKK/ERNK (National Liberation Front of Kurdistan) in Switzerland. For all these reasons, the complainant maintains that he faces a present risk to his life if forcibly returned to Turkey.

Additional submissions by the complainant

7.1 On 8 July 2014, the complainant submitted a new medical certificate issued by the consultation centre for victims of war and torture of Geneva University Hospitals, dated 22 May 2014, which attests to the existence of musculoskeletal impairments consistent with systematic violence. According to the complainant, this attestation corroborates the facts previously established in others, i.e. that he has indeed been subjected to torture and that he remains psychologically vulnerable. Forcing him to return would thus be akin to psychological violence, given his state of health.

[22] Judgement D-6684/2011 dated 18 April 2013.

[23] See *Aytulun Güclü v. Sweden*, paragraphs 7.6 and 7.7.

7.2 On 16 October 2014, the complainant submitted a further medical certificate issued by the consultation centre for victims of war and torture of Geneva University Hospitals,[24] dated 28 August 2014, which states that, although he has been receiving regular psychological treatment since 2011 (every two weeks), his state of health has been steadily deteriorating for several months, particularly the psychological symptoms, as he is suffering from severe depression resistant to pharmacological treatment and psychotherapy. The doctor refers to an underlying suicide risk, noting that the complainant is increasingly isolated socially, has daily nightmares that feature scenes of torture, and constantly feels that he is being pursued. He is unable to sleep, nervous and desperate. The uncertainty surrounding his application for asylum in Switzerland, the sense of injustice he feels because the Swiss authorities have not acknowledged that his life would be in danger if he were returned to Turkey, the recent death of a friend and fellow activist, and the fact that it is impossible for him to make plans for the future or work to support himself, are affecting his mental health. His deportation to Turkey would only expose him to further trauma.

7.3 The complainant also submits that the situation has changed for PKK members in Turkey. Referring to several press articles that were published on 14 October 2014, he recalls that the Turkish army recently bombed PKK positions, that the peace process between the two sides is in jeopardy, and that a return to armed struggle is looking more likely every day.[25]

7.4 For the above reasons, the complainant maintains that it is unreasonable to force him to return to Turkey, in view of his state of health and the current political situation in Turkey.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee notes that the State party is not contesting the admissibility of the communication. Considering that the complainant's allegation under article 3 has been sufficiently substantiated, the Committee therefore declares the complaint admissible and proceeds to its examination on the merits.

Consideration of the merits

9.1 The issue before the Committee is whether returning the complainant to Turkey would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return (refouler) a person to a State where there are

[24] Signed by the same doctor as the certificate issued on 22 May 2014, which is mentioned in the preceding paragraph.

[25] See, inter alia: "L'armée turque bombarde des positions du PKK" (Turkish army bombs PKK positions), Radio France Internationale, 14 October 2014; "La Turquie bombarde les rebelles kurdes du PKK" (Turkey bombs Kurdish PKK rebels), Libération, 14 October 2014. [According to these articles, Turkish aircraft bombed PKK targets for the first time since the March 2013 ceasefire, following rioting in the Kurdish community throughout Turkey, leaving at least 34 dead and hundreds wounded, triggered by the Government of Turkey's refusal to intervene militarily to rescue the Kurdish city of Kobane in Syria besieged by Islamic State. Mr. Öcalan warned that the fall of Kobane would mean the end of the peace process, and demanded that the Government take action.]

substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.2 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Turkey, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in Turkey. However, the question that needs to be determined is whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned.

9.3 The Committee recalls its general comment No. 1, in which it states that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to be shown to be highly probable, the Committee recalls that the burden of proof normally falls on the complainant, who must present an arguable case establishing that he runs a foreseeable, real and personal risk. The Committee also recalls that, as indicated in its general comment No. 1, while it gives considerable weight to the findings of the State party's bodies, the Committee may freely assess the facts of each case in the light of the particular circumstances.

9.4 The Committee has noted the State party's arguments that (1) the treatment suffered by the complainant did not extend beyond the problems typically experienced by the Kurdish population as a whole; and (2) that there is no temporal causal link between those events and his departure from Turkey in April 2007. The State party also maintains that diplomatic inquiries revealed that the complainant was not wanted by the police and does not appear on police records in Turkey. It concludes that the complainant was at liberty to move away from his native village in order to escape persecution.

9.5 The Committee has already noted in earlier jurisprudence that there are serious allegations that the Turkish security and police forces continue to use torture, particularly during questioning and in detention centres.[26] The State party had itself acknowledged, as illustrated in the recent jurisprudence of the Federal Administrative Court, that despite improvements in the overall human rights situation in Turkey, proven or suspected members of organizations such as the PKK are still at real risk of being persecuted, tortured or ill-treated. The Committee has taken note of the State party's argument that the complainant was at liberty to move away from his native village to escape persecution. In this connection, the Committee recalls its prior jurisprudence, in which it found that the notion of "local danger" did not provide for measurable criteria and was not sufficient to dissipate totally the personal danger of being tortured to which the complainant is exposed.[27]

9.6 With regard to the individual circumstances of the complainant, the Committee notes that his support for, and political activities within, the PKK and various other parties affiliated to it, including DEP, HADEP and DEHAP, are not in dispute; that the complainant's arrest in 1981 and imprisonment until 1990, after being convicted of an "offence against the State", are also not in dispute; and that the complainant also alleges that he was subjected to torture in Diyarbakir prison following his arrest in 1981 (paras. 2.1 and 4.1). After his release in 1990, he was subjected to further short periods of detention, was persecuted during his military service, and was required to sign a register on a weekly basis until 1999 (paras. 2.2 and 2.5).

9.7 The Committee considers that the complainant has provided sufficient evidence to show that he may be arrested if returned to Turkey. The Committee also notes that

[26] See *Aytulun Güclü v. Sweden*, paragraph 7.6.

[27] See communication No. 338/2008, *Mondal v. Sweden*, decision adopted on 23 May 2011, paragraph 7.4.

the complainant submitted a first asylum application to the Swiss Embassy in Ankara on 20 March 2003 (para. 2.4); that he was subsequently subjected to arrests, the last having been in December 2006; and that he finally managed to leave Turkey in April 2007. In the circumstances, the Committee does not view as remote the causal link between the persecution suffered and the request for protection submitted to the State party's authorities by the complainant.

9.8 The Committee also considers that the fact that the complainant was arrested at regular intervals and has been subjected to constraints in the past, suggests that he has attracted the attention of the authorities. The Committee further notes that one of his brothers was granted asylum in Switzerland in 2002 – a situation likely to attract the attention and suspicions of the Turkish authorities in relation to the complainant.

9.9 In the light of all the circumstances, the Committee considers that the complainant has provided sufficient evidence to show that he runs a foreseeable, real and personal risk of being arrested again and subjected to torture were he to be returned to his country of origin.

10. The Committee, acting under article 22, paragraph 7, of the Convention, therefore considers that the State party's decision to return the complainant to Turkey would constitute a breach of article 3 of the Convention.

11. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, of whatever steps the State party has taken in the light of the present observations.